

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 649 of 1991

with

CRIMINAL APPEAL No 89 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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MOHANJI KHANGAJI MALI

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 649 of 1991

MS SUDHA R GANGWAR for Petitioner

MR SR DIVETIA, APP for Respondent No. 1

2. Criminal Appeal No 89 of 1991

MS SUDHA R GANGWAR for Petitioner

MR SR DIVETIA, APP, for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 13/02/97

ORAL JUDGEMENT

(Per Pandya, J.)

These two appeals are filed by one and the same person, the convict accused of Sessions Case No.119 of 1980 and therefore it has specifically been recorded in Appeal No.89 of 1991 that under the circumstances no orders are required to be passed on that appeal. Virtually therefore there is only one appeal.

2 The appellant was facing charge under section 17 of the Narcotic Drugs and Psychotropic Substances Act,

1985, as also under section 66(b) and 65(a) & (e) of the Bombay Prohibition Act.

3 The case of the prosecution is that the accused was dealing in opium, a narcotic substance, and on getting reliable information in this respect, PSI - Mr Swamy of Meghaninagar Police Station raided the premises of the accused at about 3.45 PM on 25.1.1990. This information was also received by him on that very day by 1.30 PM. The raid was carried out which was successful and 360 grams of opium was found from the premises of the accused-appellant.

4 The defence was essentially of denial to the charges and serious attempts were made to make out a case of false involvement in planting of offending substance and total concoction as to the case against the accused. Normally, such defences are not taken seriously and it is in very rare cases where the accused succeeds in bringing out material on record in support of such defence. From the record it is crystal clear that so far as this case is concerned that it is the investigating officer Mr Swamy who has committed a grave blunder and it is his slip which is unintended in the prosecution has lent direct support to the said theory of plan. In his examination-in-chief PW 1 exh.6 P.I. Mr Swamy at page 43 onwards has set out the details of the information received by him that too in the presence of S.P. Mr Trivedi and he further claims that Mr Trivedi also accompanied him in the raid. The whole thing was done very efficiently and reading of the examination-in-chief affords a classical example of how a raid of this nature should be conducted.

5 Information has been reduced to writing by way of entry in the police station dairy. Panchas are called and services of the Forensic Science Laboratory are also requisitioned so that on the spot verification can be made. It is in that letter that the said P.I. Mr Swamy has slipped and that has given a clue by way of supporting material to the theory of the planning. In absence of any regular inquiry in this behalf, the aforesaid observations are not to be taken against Mr Swamy because, for that purpose, naturally, he will have to be given opportunity of hearing. However, as we are dealing with an appeal with the aforesaid defence, once the material on record is there to probablise it, it would be sufficient so far as the appellant-accused is concerned.

6 The probability has been created because of

exh.12, a letter of requisition sent to the Director, Forensic Science Laboratory. It is dated 25.1.1990 and it is received by the Laboratory at 2.10 PM. There is an endorsement to that effect and it has been verified by us from the original record also. There is a clear mention of narcotic having been seized at the house of the accused. His name is mentioned as well as the locality where he resides is also mentioned. If the request was received by the FSL by 2.10 PM containing the aforesaid mention of seizure, obviously, the raid must have been conducted prior to it. When the record is examined, on the contrary, the raid has not commenced but only preparation has just started in the form of first part of the panchnama exh.10 page 83. By 2.15 PM the first part of the panchnama had concluded. They left the Meghaninagar Police Station to raid the premises of the accused after 2.15 PM.

7 The P.I. Mr Swamy, in his cross-examination at page 53, in the middle, has admitted that exh.12 letter of request to FSL was prepared at his instance and under his direction by one Constable - Mr Naseer while he was busy with panchnama exh.10. According to him, the first part of the panchnama exh.10 was being prepared and the said yadi was written.

8 It is therefore obvious that the yadi could not have contained reference to the actual seizure. Further, it has been brought out from the deposition of Mr Swamy that he was already under orders of transfer. Only because his successor-in-office had not come, he was holding the charge according to him. It is therefore obvious that there was no compulsion for him to proceed with the matter. He could have deputed somebody else also. He assumes the responsibility himself and according to him Mr Trivedi accompanies him and carry out the raid in the aforesaid manner but, in the process, has clearly committed a mistake and thereby the defence's version of being falsely implicated in our opinion probablised. In our opinion, therefore, the appellant succeeds. The case against him is not proved beyond reasonable doubt. He is therefore ordered to be released forthwith if not required for any other purpose. Fine if paid is ordered to be refunded.

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